

1 UNITED STATES DISTRICT COURT  
2 CENTRAL DISTRICT OF CALIFORNIA  
3 WESTERN DIVISION - LOS ANGELES

4 STEPHEN MERRITT, ) Case No. CV 23-9217-MEMF (KSx)  
5 Plaintiff, )  
6 v. ) Los Angeles, California  
7 BARCLAYS PLC, et al., ) Thursday, May 15, 2025  
8 Defendants. ) 9:14 A.M. to 10:02 A.M.  
9 ) 11:33 A.M. to 11:46 A.M.  
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13 TRANSCRIPT OF PROCEEDINGS  
14 BEFORE THE HONORABLE MAAME EWUSI-MENSAH FRIMPONG  
15 UNITED STATES DISTRICT JUDGE

16 Appearances: See Page 2  
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1 LOS ANGELES, CALIFORNIA, THURSDAY, MAY 15, 2025, 9:14 A.M.

2 THE CLERK: Now calling item No. 1, Case No. L.A.  
3 CV 23-09217, *Stephen Merritt v. Barclays PLC, et al.*

4 Counsel, please stand and state your appearances.

5 ASHLEY M. PRICE: Good morning. Ashley Price from  
6 Robbins Geller Rudman and Dowd on behalf of the plaintiffs.

7 SHAWN A. WILLIAMS: Good morning, Your Honor.  
8 Shawn Williams, Robbins Geller Rudman and Dowd, on behalf of  
9 the plaintiffs.

10 JOHN M. MCNICHOLS: Good morning, Your Honor.  
11 John McNichols from Williams and Connolly on behalf of  
12 Mr. Staley.

13 PETER G. MORRISON: Good morning, Your Honor.  
14 Peter Morrison with Skadden Arps on behalf of Defendants  
15 Barclays and Higgins, and with me today are my colleagues  
16 Boris Bershteyn and Lara Flath, and Ms. Flath will be  
17 handling the argument from our side.

18 THE COURT: Thank you. Good morning.

19 BORIS BERSHTEYN: Good morning, Your Honor

20 LARA A. FLATH: Good morning.

21 THE COURT: Okay. Good morning to all counsel.  
22 Thank you. You may be seated.

23 I trust the parties received the Court's tentative?

24 MULTIPLE SPEAKERS: Yes, Your Honor.

25 THE COURT: Okay. Wonderful.



1 Well, since it's a defense motion, I will let the  
2 defense be heard. You can take the podium. There is a  
3 button to the right of the microphone if you need to raise or  
4 lower the podium.

5 MS. FLATH: Thank you, Your Honor. Good morning  
6 again. Lara Flath from Skadden on behalf of Defendant  
7 Barclays PLC and Mr. Higgins.

8 So thank you, Your --

9 THE COURT: Sorry. Just a moment, Counsel.

10 MS. FLATH: Oh, of course.

11 (Pause.)

12 THE COURT: I think there's somebody else that  
13 wants to make an appearance. You can come forward and --

14 MATTHEW D. UMHOFFER: I apologize. Your Honor,  
15 Matthew Umhofer. I'm local counsel for Williams and Connolly  
16 on the case. I'm inconsequential today, but I think I needed  
17 to make an appearance --

18 THE COURT: Okay. Thank you.

19 MR. UMHOFFER: Thank you.

20 THE COURT: Thank you.

21 Okay, Counsel. Please proceed.

22 MS. FLATH: Thank you, Your Honor.

23 First, thank you for the tentative ruling issued in  
24 order to assist us in preparing for the hearing. Obviously,  
25 I'm very happy to respond to any questions that the Court



1 might have but wanted to focus on just a few areas of the  
2 tentative ruling with respect to the Exchange Act claim and  
3 Section 10(b). Probably no surprise, Your Honor, we will  
4 agree that you certainly got the substance of the Section  
5 90(a) claim, count three, correct in dismissing that.

6 I'd like to start by turning to loss causation and  
7 really try to, hopefully, convince Your Honor that the  
8 proposed finding, which is included in the tentative ruling  
9 on page 16, that the FCA decision notice and 2023 press  
10 release could conceivably have caused the alleged loss is  
11 incorrect. To start, we would submit, Your Honor, that the  
12 applicable standard is not whether the alleged corrective  
13 disclosure could have conceivably caused a loss. Even in  
14 *Twombly*, dealing with a Rule 8 standard of pleading, the  
15 Supreme Court recognized that the question is whether  
16 plaintiffs have nudged their claims across the line from  
17 conceivable to plausible.

18 Here, in the context of a claim of securities  
19 fraud, under Section 10(b) plaintiffs face an even higher  
20 burden. Certainly, they must comply with the strictures of  
21 Rule 9(b), as Your Honor recognized, and the PSLRA. That  
22 applies to every single element, including loss causation.  
23 They must allege with particularity. And that's certainly  
24 been emphasized from the Court in recent holdings, including  
25 *Espy* from just last year, as well as the *Cloudera* case that,



1 certainly, the tentative cites.

2           This is a demanding standard, and plaintiffs have  
3 the burden to meet it with respect to those particularities,  
4 and what we'd like to focus on today is, really, the argument  
5 that the Barclays defendants, so Barclays PLC and  
6 Mr. Higgins, specifically focused on and made. And to fully  
7 assess whether in fact the FCA's decision and 2023 press  
8 release was a corrective disclosure, the entirety of the 2021  
9 press release needs to be looked at, and that is, there is  
10 more information in that press release than what the  
11 Complaint selectively cites and alleges in Paragraph 83.

12           The 2021 press release, which as the tentative  
13 notes is ECF 59-3, discloses that the FCA's conclusions  
14 related to both Mr. Staley's characterization to Barclays of  
15 his relationship with Epstein and the subsequent description  
16 of that relationship in Barclays subsequent response to the  
17 FCA. The very next sentence: "In view of those conclusions,  
18 and Mr. Staley's intention to contest them, the Board and  
19 Mr. Staley have agreed...he will step down."

20           So there is a connection here that because of the  
21 FCA's conclusions with respect to Staley's characterization  
22 of his relationship and his characterization to Barclays of  
23 that he left the bank. The only plausible interpretation of  
24 that is that the FCA's conclusions were not good with respect  
25 to Mr. Staley in the view of whether he had characterized the



1 relationship appropriately. He left the bank. He left his  
2 position as CEO.

3 In addition, the allegation from Paragraph 83 of  
4 the Complaint that Barclays, quote, continued to support  
5 Staley, is also contradicted by the full context and the full  
6 language of the 2021 press release. And of course, you know,  
7 well-pleaded allegations can be taken as true, but if they  
8 contradict a document that is fully, and Your Honor's  
9 properly held, sort of the subject of this motion, the  
10 document itself controls.

11 After stating that Staley will step down, the next  
12 paragraph -- exactly as the tentative notes -- says: "The  
13 Board is disappointed at the outcome," but then explains,  
14 Staley had done a good job of running Barclays for the last  
15 five years. This is not a situation where the CEO was being  
16 suspended or Barclays and Mr. Staley were contending and  
17 contesting these findings. Again, he left the bank. There  
18 is no good interpretation that is plausible of that  
19 conclusion from the FCA relating to Mr. Staley's  
20 representations to Barclays about his relationship with  
21 Mr. Epstein.

22 In addition, the press release goes on to say: "The  
23 regulatory process still has to run its full course," that  
24 "it is not appropriate for Barclays to comment further."  
25 That's, of course, right. The investigation had already been



1 disclosed back in February of 2020, and there is no right of  
2 confession that a pending investigation triggers, and indeed,  
3 while a regulatory investigation or additional findings --  
4 that process continues, there are confidentiality concerns  
5 and obligations as to what can or cannot be shared.

6           So in light of all of that information -- the FCA  
7 had investigated, it had come to a conclusion regarding what  
8 Mr. Staley had said to both Barclays and the FCA about his  
9 relationship -- Staley could no longer continue as CEO.

10           In addition, the comment about the central question  
11 of the investigation -- in fact, the press release clarifies  
12 that Barclays stated their prior support of Mr. Staley back  
13 in 2019 was limited to the central question of whether  
14 Mr. Staley saw or was aware of Mr. Epstein's alleged crimes.  
15 That's the piece. It is not sort of a comment about the  
16 scope of the FCA investigation but actually temporally  
17 linking the fact that the reason the board and others had  
18 clarified their support of Staley at that time was that  
19 question: Was he aware of alleged crimes? The FCA has not  
20 contradicted that piece.

21           Immediately after this information and this  
22 disclosure -- which -- the day after the FCA announces these  
23 -- releases these conclusions, the 2021 press release comes  
24 out. Analysts immediately connected this -- these  
25 conclusions and Mr. Staley's departure -- linking them to the



1 characterization of his relationship with Mr. Epstein.  
2 Plaintiffs themselves allege that. That's in Paragraph 84.  
3 Within ten days, by November 12th, articles start coming out  
4 about the details of the investigation, including information  
5 that plaintiffs claim is newly alleged in 2023. That is  
6 simply not supported by the record, including the articles  
7 that they themselves rely upon and, again, are the subject of  
8 judicial notice for purposes of this motion.

9           As of November 12, 2021 -- this is ECF 59-4,  
10 The Financial Times article -- it's reporting that Mr. Staley  
11 and Mr. Epstein exchanged 1,200 emails between 2008 and 2012,  
12 when he was at JPMorgan, showing a close relationship. The  
13 article also references that these emails included  
14 unexplained terms, that the -- that Mr. Staley and Epstein  
15 had become sufficiently close for Mr. Staley to visit  
16 Mr. Epstein years ago in Florida, and even just a few months  
17 before joining Barclays in 2015 they had remained in contact.  
18 Those are all of the alleged details and facts that  
19 plaintiffs claim became newly disclosed in 2023. Within ten  
20 days they were already out into the public.

21           That continues on over the course of the next,  
22 almost, two years. By February of 2023, more about those  
23 emails had come out, including the excerpts with  
24 pronouncement of profound friendship and continued  
25 allegations of a close personal relationship. By



1 March of 2023, again, The Financial Times, other mainstream  
2 media publications are reporting upon this.

3           And the reason why I harp, Your Honor, on all of  
4 those facts and all of what is in the public is because, if  
5 information had been disclosed prior to the alleged  
6 corrective disclosure, the Ninth Circuit has held -- and  
7 courts within this circuit applying that law -- that  
8 plaintiffs cannot plead loss causation. That's the *Lopes v.*  
9 *Fitbit* case affirmed by the Ninth Circuit in 2021, as well as  
10 other cases too.

11           And even the tentative, Your Honor, also recognizes  
12 this. It notes that the final notice and 2023 press release,  
13 at most, recognize confirmation. Confirmation inherently  
14 means the disclosure cannot be corrective. Plaintiffs bear  
15 the burden of specifically pleading -- again, with  
16 particularity under 9(b) and according to the demanding  
17 standards of the PSLRA -- that there was something new.  
18 Simply pointing to confirmatory or even additive information  
19 is not enough to establish loss causation.

20           In addition, the only other, perhaps, new  
21 information that plaintiffs do not point to that comes from  
22 the 2023 press release is that Barclays itself was not the  
23 subject of this proceeding, it was Staley, and that the FCA  
24 found that Staley had misled Barclays. Mr. Staley was the  
25 only one with the full knowledge of his relationship with



1 Mr. Epstein. Plaintiffs ignore that entirely.

2 My final point here, Your Honor, on the tentative  
3 and loss causation -- I discussed, I think, sort of the  
4 confirmatory information. The second half of that sentence  
5 in the tentative points out that the FCA's notice also  
6 revealed, quote, details about defendant's specific  
7 misleading statements to the FCA. In reading that, it seems  
8 to be a reference to Barclays's October 2019 letter to the  
9 FCA --

10 THE COURT: Sorry. Where are you in the tentative,  
11 again?

12 MS. FLATH: Of course, Your Honor. It's on  
13 page 17.

14 THE COURT: Line?

15 MS. FLATH: Let me get there right -- it would be  
16 line -- I'm sorry -- 14 through 16 and, specifically,  
17 15 through 16.

18 THE COURT: Got it.

19 MS. FLATH: Thank you. I wrote down every other, I  
20 think, line reference, Your Honor, but not that one.

21 THE COURT: Go ahead.

22 MS. FLATH: So details about defendants' specific  
23 misleading statements to the FCA seems to be relating to the  
24 October 2019 letter that was submitted. That letter is not  
25 an alleged misstatement that would rise -- give rise to



1 liability under the Securities Act -- or, excuse me -- the  
2 Exchange Act and the securities laws of the United States.  
3 It's not one of the alleged misstatements. That makes sense.  
4 It's not a public statement. It is a statement to a  
5 regulator. It's not going to be the basis for actionable  
6 securities fraud.

7           So even if, say, new information about that letter  
8 came out, that's not the basis for the Section 10(b) claim  
9 that plaintiffs are alleging here. And again, plaintiffs  
10 bear the burden, not the Court, of showing what happens here  
11 and what inferences should be drawn. They cannot -- they  
12 must plead those specific facts, including with respect to  
13 loss causation. They have to articulate. The Court does not  
14 need to do that work for them.

15           And again, fundamentally, by this point Mr. Staley  
16 had been gone from the bank for nearly two years. That fact  
17 should matter. The investigation was disclosed in 2020, the  
18 preliminary inclusions were disclosed in 2021, Mr. Staley  
19 leaves, additional public information about these very  
20 details that they claim were only revealed for the first  
21 time, and then more information comes out in 2023. That is  
22 not enough under the PSLRA to plead loss causation.

23           Thank you.

24           THE COURT: Thank you.

25           MS. FLATH: Moving just briefly -- I promise I



1 would attempt to be targeted here -- to Mr. Higgins.  
2 Mr. Higgins -- you know, I think there are two reasons, and I  
3 went back and forth on, frankly, which one I should start  
4 with, with respect to whether he is a maker of particular  
5 statements or scienter. I think in some ways they will go  
6 together, but let me start just very quickly on why  
7 Mr. Higgins should not be liable under 10(b) -- Section 10(b)  
8 for particular statements.

9           So as a factual matter, the tentative does note  
10 that, you know, certain documents -- this is on page 14,  
11 lines 17 through 23, and in that -- in those -- in that  
12 section it says (reading): As chairman of the board, it  
13 logically follows that statements made by the board were made  
14 or at least approved by Higgins. And I'll come back to that  
15 point, but the next sentence is (reading): Here the  
16 allegations reflect that the statements were made by the,  
17 quote, board, see, for example, paragraph 69.

18           That is the only -- Paragraph 69, Your Honor, is  
19 actually the only allegation which relates to a statement  
20 made by the board. So the factual premise of what the  
21 Complaint actually alleges and the statements is not true.  
22 This reasoning would not apply to the statements where  
23 Mr. Higgins is not the speaker, which would include  
24 Paragraphs 70, 78, 83, 89, and 94.

25           And turning back to the point that "as chairman of



1 the board" it is logical to follow that Mr. Higgins was -- he  
2 made those statements or approved them, that is not enough,  
3 again, under the PSLRA to establish that Mr. Higgins is the  
4 maker of these statements -- or the Supreme Court's case law.  
5 The reason being: That does not establish substantial  
6 participation or ultimate authority. Plaintiffs have only  
7 included the conclusory allegation here in Paragraph 50 and  
8 51, but that is not enough. Each statement, to be the basis  
9 of a Section 10(b) claim, must be parsed. Plaintiffs, as the  
10 Ninth Circuit has noted repeatedly, including in *Cloudera*,  
11 which the tentative cites -- each statement must be specific,  
12 why, what, and what they knew.

13 And certainly, there's -- we cited this case,  
14 Your Honor, in our papers, but the *Bruce v. Suntech Power*  
15 case from the Northern District of California: To the extent  
16 plaintiffs seek to hold an individual liable for other  
17 statements on the basis of his position as, for example, CFO,  
18 conclusory allegations that he had the authority to and to  
19 control the making of those statements by virtue of the  
20 responsibilities and activities as CFO lack the requisite  
21 specificity.

22 Plaintiffs own case, the only case that they cite  
23 in support of Mr. Higgins having the authority here is the  
24 *Manalevy v. Bofi* case from the Southern District in 2021.  
25 That case, too, notes that in fact the plaintiffs have not



1 alleged sufficient facts to show that, at that time, the  
2 chairman of the board of directors was the maker of a press  
3 release statement.

4           Otherwise, Your Honor, the result would be that the  
5 chairman of the board would effectively be assumed to be the  
6 maker of these statements without putting plaintiffs to their  
7 burden and giving them inferences that they do not get at  
8 this stage in a PSLRA case. Otherwise, chairman of the board  
9 would effectively be a primary violator under Section 10(b)  
10 anytime there's, almost, a public statement.

11           In addition, Your Honor, the tentative recognizes  
12 that there are certain statements -- for example,  
13 Paragraph 83 -- that is not misleading. If the statement is  
14 not misleading, it cannot be the basis for the claim. And  
15 the claim should be assessed with respect to each and every  
16 allegation. It is not simply the claim moves forward. It is  
17 the claim with respect to each alleged misstatement. In  
18 particular, too, one of the comments -- one of the alleged  
19 misstatements by Mr. Higgins purports to reveal comments made  
20 to him during a private investor call. Once again, that  
21 cannot be the basis for a claim to the investing public and  
22 an alleged misstatement.

23           Sticking with "Mr. Scierter" but moving to --  
24 "Mr. Scierter" -- Mr. Higgins -- moving to scierter and  
25 Mr. Higgins alleged scierter --



1 THE COURT: Counsel, if I could just interrupt.

2 MS. FLATH: Of course.

3 THE COURT: I'm not sure how much longer you have  
4 with your argument. I do have a pretty full calendar. So I  
5 just -- I want to be mindful, and obviously I want to hear --

6 MS. FLATH: I --

7 THE COURT: -- from plaintiffs' counsel, and I  
8 imagine you have some rebuttal. So I'm hoping you can wrap  
9 up in a couple of minutes?

10 MS. FLATH: I will --

11 THE COURT: Okay. Thank you.

12 MS. FLATH: I will absolutely do that. Thank you,  
13 Your Honor.

14 THE COURT: Thank you.

15 MS. FLATH: Scienter -- respectfully, the tentative  
16 applies the wrong standard. Access to the alleged -- the  
17 underlying disputed facts would not be enough to establish  
18 scienter. Plaintiff concedes that, especially with respect  
19 to Mr. Higgins, it has no allegations of plausible motive to  
20 commit fraud, and without that plaintiff bears the burden to  
21 plead compelling and particularized facts showing deliberate  
22 recklessness on a statement-by-statement basis -- that is,  
23 again, an extreme departure from the standards of ordinary  
24 care -- or it must have been so obvious that the actor must  
25 have been aware of it. That is no small hurdle for the



1 securities plaintiff -- the securities fraud plaintiff -- the  
2 *Prodanova* case from the Ninth Circuit in 2021.

3           Simply alleging that Mr. Higgins had access to  
4 these emails that are alleged to be at odds with these  
5 disclosures is not enough to establish scienter. Plaintiffs  
6 have cast these statements now as omissions or half-truths,  
7 and in that case, *Tellabs* from the Supreme Court shows that  
8 the inference is even harder. Omissions and ambiguities  
9 count against inferring scienter. To sort of simply accept  
10 that if there is an alleged access to information -- that,  
11 you know, certainly we would dispute, Your Honor, that there  
12 are false and misleading statements, but to accept that would  
13 to eviscerate the scienter requirement.

14           And plaintiffs do not allege that Mr. Higgins or  
15 others at Barclays had actual access to information  
16 contradicting the alleged falsities at the time those  
17 statements were made. That's the *Welgus* case affirmed by the  
18 Ninth Circuit in 2019.

19           My last point on scienter, Your Honor, would be  
20 simply, too, that -- we disagree for the reasons stated in  
21 our paper. Of course, we think *ChinaCast* is distinguishable  
22 with respect to Mr. Staley and a corporation can only be held  
23 to have scienter through the acts of its employees.  
24 Certainly, by the time Mr. Staley left in 2021, his scienter  
25 could not be imputed to Barclays for any alleged



1 misstatements after that departure.

2           And then, finally, Your Honor, recognizing of  
3 course the time, with respect to whether or not all of the  
4 alleged misstatements are false, we would simply make the  
5 point that in assessing these allegations that the tentative  
6 goes too far in accepting those allegations and drawing all  
7 inferences in favor of the plaintiffs. As both *Cloudera* and  
8 the *Metzler* case from the Ninth Circuit, which the tentative  
9 cites, recognize, courts need not indulge in unwarranted  
10 inferences in order to save a claim from dismissal. It is  
11 the plaintiff's burden to precisely explain why each  
12 particular statement is false, misleading with particularity.

13           And in the event of turning these into, quote,  
14 omissions or otherwise, there is not an obligation to give  
15 all information that perhaps the plaintiffs say they might  
16 want. There's an even higher standard in the context of a  
17 statement being alleged to be misleading on the basis of  
18 omission that plaintiffs themselves have to prove. If  
19 Your Honor is inclined to give them leave to amend on the  
20 Section 90(a) claim, we certainly think that they should be  
21 held to their burden with respect to both loss causation as,  
22 as well to each of these alleged misstatements and scienter.

23           THE COURT: Thank you.

24           MS. FLATH: Thank you, Your Honor. I would  
25 appreciate a chance to rebut very briefly.



1 THE COURT: Thank you.

2 Okay. Let me hear from plaintiff's counsel.

3 MR. MCNICHOLS: Your Honor, one question  
4 beforehand?

5 THE COURT: Oh. Yes?

6 MR. MCNICHOLS: Mr. Staley has moved separately.

7 THE COURT: Okay.

8 MR. MCNICHOLS: I don't intend to repeat everything  
9 that Ms. Flath said. I don't know whether it's Your Honor's  
10 preference to have me go next, after they've had a chance to  
11 respond, or --

12 THE COURT: It is my preference to go next -- for  
13 you to go next. I think -- I just now am going to sort of  
14 need to -- we've taken up a lot of time now, and I -- I'm  
15 concerned that we're not going to get to my 10:00 o'clock on  
16 time. So just be brief, and if we can't finish the hearing  
17 today, we'll have to come back on another day. So do you  
18 think you'll need more than five minutes?

19 MR. MCNICHOLS: I certainly don't intend to repeat  
20 what Ms. Flath said. I had one point to address, and then  
21 I'll be done.

22 THE COURT: Okay. So you think you can do that in  
23 five minutes?

24 MR. MCNICHOLS: I think I can.

25 THE COURT: Okay. Wonderful. Thank you.



1 MR. MCNICHOLS: Again, Your Honor, John McNichols  
2 from Williams and Connolly on behalf of Mr. Staley.

3 As the Court's aware from the briefing, there's a  
4 lot of overlap between the arguments that we made and the  
5 arguments that the other defendants made in this case, and as  
6 I said before, I certainly don't intend to repeat the points  
7 that Ms. Flath eloquently made.

8 One point that was, I think, unique to our briefing  
9 concerned the materiality discussion that Your Honor takes up  
10 on page 15 of the tentative, and just to refresh on this  
11 point, our statement, you know, or argument in the brief,  
12 separate from the "truth on the market" issue, was that the  
13 withheld -- allegedly withheld information concerning the  
14 nature of the relationship between Mr. Staley and Mr. Epstein  
15 would not matter to a reasonable investor.

16 And your argument -- excuse me -- Your Honor has  
17 taken that up in the middle of page 15 on lines 16 and 17.  
18 There is a full page of discussion, but I think this really  
19 encapsulates Your Honor's reasoning, where Your Honor wrote  
20 (reading): Defendants have not shown that a reasonable  
21 investor could not possibly find the relationship of a top  
22 executive of Barclays bank with a convicted sex offender  
23 related to their decisions.

24 We respectfully submit that that's not the right  
25 question, Your Honor, and what I mean by that is that the



1 materiality analysis focuses not on the relationship as a  
2 whole but solely on the withheld or misrepresented aspect of  
3 the relationship. As we know from the Complaint, accepting  
4 it as true, at Paragraph 72, as of February 2020, defendants  
5 -- this is right out of the horse's mouth; right -- tell the  
6 investing public that Mr. Staley has had a long-standing  
7 professional relationship with Jeffrey Epstein that began in  
8 2000 when he was asked to run JPMorgan's private bank, where  
9 Epstein was already a client.

10           So the investing public knows, as of the time of  
11 the alleged misrepresentations in this case, during the class  
12 period, that Mr. Staley had for more than a decade a  
13 professional relationship providing client services to  
14 someone who he knew was a convicted sex offender. That's  
15 what the public knew. Now, on their reading of the facts, at  
16 least according to the Complaint, what the public didn't know  
17 was that he was also friends with him and that he went to his  
18 house and that he saw him.

19           In our -- the materiality analysis here -- in other  
20 words, to decide that this would matter to a reasonable  
21 investor -- that is, the withheld information in this case --  
22 the Court would have to conclude that to a reasonable -- a  
23 reasonable investor might say, "I was fine with it when I  
24 knew that the CEO of this bank had a long-standing  
25 professional relationship providing client services to



1 someone who he knew was a convicted sex offender. I was fine  
2 with that. But now that I know that he went to his house and  
3 that he exchanged warm emails with him, I'm out." And we  
4 respectfully submit to Your Honor that that is not a  
5 plausible line of reasoning for any reasonable investor to  
6 take. The personal nature of the relationship can't be the  
7 straw that broke the camel's back given all the other  
8 information that was already out there and acknowledged in  
9 the public about the nature of the relationship.

10 Now, Your Honor has taken this up a little bit  
11 further on the same page, down on page 15 again, and this is  
12 line 17 through 19 where Your Honor writes (reading):  
13 Frankly, the simple fact that Barclays Bank initiated an  
14 investigation and that FCA initiated an investigation shows,  
15 at the very least, that it was plausible that the information  
16 was material. Now, the use of the word "information" there  
17 is critical, and I submit to the Court that the information  
18 that was investigated by Barclays Bank and by the FCA was not  
19 the same information that Your Honor needs to opine upon in  
20 the materiality analysis.

21 And on this point I command Your Honor's statement  
22 over on page 3 of the tentative at lines 12 through 14, where  
23 Your Honor wrote (reading): On August 15, 2019, the U.K.'s  
24 Financial Conduct Authority contacted Higgins to request a  
25 written response detailing how the board had satisfied itself



1 that there was no impropriety in the relationship between  
2 Staley and Epstein. In other words, that's the FCA's  
3 inquiry, and that's Barclays's inquiry. That is a different  
4 inquiry from the question whether they were friends. That's  
5 not the same thing. And to say that the FCA's concern and  
6 Barclays's concern about impropriety shows that there was  
7 materiality in the friendly relationship between these two is  
8 not a sound connection or conclusion.

9 And unless Your Honor has questions about this,  
10 then I'll rest on the papers. Thank you.

11 THE COURT: Thank you.

12 MS. PRICE: Thank you, Your Honor. Ashley Price  
13 from Robbins Geller Rudman and Dowd on behalf of the  
14 plaintiffs.

15 We appreciated Your Honor's tentative ruling, of  
16 course, and in oral argument I don't think that I could  
17 further add to the well-thought-out arguments and issues that  
18 Your Honor already addressed in the tentative. So I don't  
19 intend to add substantive arguments to that tentative today,  
20 but if Your Honor has questions, I'm happy to ask -- answer  
21 them.

22 We also appreciated that Your Honor provided leave  
23 to amend on the FSMA dishonest delay claim. We intend to do  
24 so.

25 THE COURT: Thank you.



1 Can you respond to the arguments that were made by  
2 counsel for Barclays? That would be helpful.

3 MS. PRICE: Sure. So with respect to the loss  
4 causation arguments --

5 THE COURT: Yes.

6 MS. PRICE: -- to start with those, counsel for  
7 Barclays stated that a lot of the information was already in  
8 the public and that that therefore meant that the FCA  
9 decision in October 2023 and the related Barclays press  
10 release could not provide new information to the public. But  
11 what it in fact did -- we alleged the information that it  
12 provided, which is that the FCA finally decided that the --  
13 that -- I'm sorry -- that the FCA finally decided that the --  
14 pardon me, Your Honor -- that the FCA finally decided that  
15 Staley had misrepresented the close personal nature of his  
16 relationship with Mr. Epstein to the FCA when the FCA had  
17 asked about it. That personal relationship was not disclosed  
18 either to the public or to the FCA upon asking, and the FCA  
19 made clear that that was misleading, and that was new  
20 information to the public that the public had not heard  
21 before. It didn't know --

22 THE COURT: Which I think what counsel was saying  
23 was that by the time of the 2023 press release, the public  
24 was aware of the personal relationship, and so, in her view,  
25 there could be nothing -- the FCA determination didn't add



1 anything new. And you're saying what it added was it was not  
2 previously known that Staley had misrepresented his  
3 relationship?

4 MS. PRICE: That's right. That Staley had  
5 misrepresented his relationship, and that Barclays had  
6 misrepresented that relationship because Barclays -- Barclays  
7 actually sent the letter to the FCA. Barclays -- and Higgins  
8 signed that letter -- Mr. Higgins signed that letter, and so  
9 that information was not disclosed prior to the FCA's  
10 decision. So that -- that's the information that was not  
11 disclosed.

12 THE COURT: But I guess they would argue, well, the  
13 emails -- anyone could look at what Barclays had said and  
14 what Staley had said and look at the emails and see that  
15 there had been a misrepresentation.

16 MS. PRICE: I don't agree with counsel for Barclays  
17 on that. The information was not provided to the public in  
18 the same intensity or credibility that the final decision  
19 eventually came out with, and that is the "truth on the  
20 market" standard. It needed to be not just various newspaper  
21 articles. It needed -- Barclays needed to come clean --  
22 under *Provenz v. Miller* -- *Provenz v. Miller*, Barclays needed  
23 to come clean about the fact that it had misrepresented to  
24 the FCA Staley's close personal relationship. Barclays, at  
25 the time that it was asked by the FCA, had at its fingertips



1 a cache of 1,200 emails. It never came clean about what it  
2 looked at. It -- and --

3 THE COURT: And I think one of counsel's other  
4 points was, first of all, there's not an obligation to say  
5 everything that you knew and, secondly, that confirming  
6 information that's already out there, that does not meet the  
7 standard. So can you address that.

8 MS. PRICE: So --

9 THE COURT: So in response to your point about  
10 whatever information out there wasn't the same intensity or  
11 credibility as the FCA findings.

12 MS. PRICE: Well, so I think that I would refer  
13 Your Honor to *Macquarie v. Moab*, which is a Supreme Court  
14 case that says that half-truths are still actionable as --  
15 going only so far as -- you know, only partially disclosing  
16 the truth is not fully revealing the truth. So -- so -- I'm  
17 sorry. What was the second part of your question?

18 THE COURT: The second part of the question was  
19 counsel indicated that to the extent that the 2023 material  
20 confirmed or made more serious -- whatever word you want to  
21 use -- had already been in the market, that's not enough for  
22 the standard because it has to be new information. It can't  
23 simply be confirming something that already was out there for  
24 the loss causation element.

25 MS. PRICE: Right. So what was not already out



1 there was the scope of the relationship. What Barclays had  
2 told the market was that "All that we were asked to look at  
3 was whether or not Staley knew about the misconduct that  
4 Mr. Epstein had engaged in, not the closeness of the  
5 relationship," and why that's important is because as a bank,  
6 as an institutional -- as an international institution, it  
7 needed to be clear about its CEO's relationships with a  
8 convicted sex offender and whether or not there were any sort  
9 of issues along those lines.

10 THE COURT: And why isn't the fact that the emails  
11 purportedly came out prior to this press release -- why isn't  
12 that sufficient? Because the emails would show everybody,  
13 "Wow, they were really close, and that's not what Barclays  
14 said."

15 MS. PRICE: There were only scattered emails. It  
16 didn't come out with the same intensity and credibility, and  
17 that's really the important standard for "truth on the  
18 market." It needs -- various press releases -- or, excuse me  
19 -- various press reports -- you know, one-off press reports  
20 don't come at the same intensity and credibility as an FCA --  
21 a regulator's investigation and Barclays itself actually  
22 disclosing what it knew about Mr. Staley's relationship.

23 THE COURT: And can you address counsel's arguments  
24 that the press release itself contradicts some of the  
25 allegations in the Complaint, in particular, the idea that



1 Barclays continued to support Staley because, according to  
2 counsel, he left the bank, and the full email suggests that  
3 things were not good, and so on what basis can you assert  
4 that Barclays continued to support Staley?

5 MS. PRICE: So Barclays continued to support Staley  
6 in various of its press releases. For instance, in the -- it  
7 claimed that Mr. Staley -- it claimed that Mr. Staley had  
8 been a good leader of the bank and that it was continuing and  
9 that the information that it received from Mr. Staley did not  
10 differ from what it reported --

11 THE COURT: And that's in the 2021 press release?

12 MS. PRICE: No. In the 2021 press release, the  
13 press release focuses on what the investigation was looking  
14 at and so their -- Barclays made a narrow claim that all that  
15 they were asked to look at by the FCA was whether Mr. Staley  
16 knew about the misconduct of Mr. Epstein, and they claimed  
17 that they did not. So that is all that the focus was on.

18 THE COURT: And I think counsel's concern was that  
19 Paragraph 83 makes reference to Barclays continuing to voice  
20 support for Staley, but according to counsel, the press  
21 release does not show a "continuing to voice support for  
22 Staley."

23 MS. PRICE: Well, simply the fact that Mr. Staley  
24 is leaving the company and providing -- and is contesting the  
25 FCA's decision does not voice support for Staley.



1 I'd like to --

2 THE COURT: I'm sorry. Say that again?

3 MS. PRICE: The fact that Mr. Staley decided to  
4 leave the bank and contest the FCA decision -- that doesn't  
5 voice any sort of support by Barclays for Mr. Staley.

6 THE COURT: No, but the allegation is -- I guess I  
7 thought it was the opposite. Your -- the allegation in the  
8 Complaint is that Barclays "continued to voice its support  
9 for Staley." That's in --

10 MS. PRICE: That's right.

11 THE COURT: -- Paragraph 83.

12 MS. PRICE: Right.

13 THE COURT: And counsel is saying that is a  
14 conclusory allegation that is contradicted by the actual  
15 press release, which does not show support for Staley.

16 MS. PRICE: And I think that they pointed to the  
17 fact that Mr. Staley was leaving the company at the time.  
18 They pointed to the fact that Mr. Staley was leaving, and  
19 that fact by itself doesn't show one way or another. It just  
20 shows that he's deciding to contest the FCA's decision.

21 I'd like to point out that in Paragraph 88, which  
22 is after the press release that we're looking at right now,  
23 Barclays continues -- does continue to voice support for  
24 Mr. Staley and discusses how Mr. Staley had improved the bank  
25 under his leadership, provided clear strategy, and they



1 continue to note that it's not important to comment on the  
2 FCA's investigation. But the support continues well after  
3 Mr. Staley's departure from the bank.

4 THE COURT: Can you address counsel's arguments  
5 that the Complaint fails to properly allege under the PLRS --  
6 the standard of the act substantial participation and  
7 ultimate authority by Mr. Higgins with respect to some of the  
8 statements and that the -- for the Court to determine that it  
9 was plausible or possible -- I can't remember what words were  
10 used -- that as the chairman of the board -- he made these  
11 statements -- that's not sufficient under the relevant case  
12 law; even though that he was the -- he had the role of the  
13 chairman of the board, you need to allege these other  
14 elements.

15 MS. PRICE: Sure. So we address that in our  
16 opposition -- on page 14 of our opposition, particularly to  
17 Barclays, and we identified the particular statements to  
18 which he -- to which we attributed to him, and it suffices  
19 for him to be a maker when he signed or approved any of the  
20 statements, and we specifically identified those statements  
21 that we're discussing. In addition, he took credit for the  
22 director effectiveness assessment, and that was on the  
23 alleged misstatements on February -- at the beginning of  
24 February 2020.

25 THE COURT: And then can you address -- counsel



1 also indicated that the Court used the incorrect standard for  
2 scienter? Can you address that?

3 MS. PRICE: We believe that the Court used the  
4 correct standard for scienter. The standard is laid out in  
5 *Tellabs*, as counsel put forward, but we've provided -- we've  
6 alleged a strong inference of scienter, which the Court did  
7 find. Mr. Higgins was involved in the investigation  
8 following the FCA providing the cache of emails to Barclays  
9 when asked about the inconsistency of the October 2019 letter  
10 sent to the FCA. He reviewed the emails. He reviewed the  
11 draft letter to the FCA. He reviewed -- and he approved the  
12 letter and ultimately signed it. He was involved in all of  
13 those things. He had at his fingertips and was sitting on  
14 the board when the board conducted its internal investigation  
15 into the email cache and -- and for all of those reasons, he  
16 had -- he knew that the representations made to the FCA and  
17 then the representations made to the market were false and  
18 misleading because they represented that Staley's  
19 relationship was not close, was only professional.

20 THE COURT: And then, finally, can you address the  
21 arguments made by Staley's counsel that the market already  
22 knew that Mr. Staley had a long-standing professional  
23 relationship with somebody he knew to be a sex offender and  
24 so it couldn't be material to the market to know that he also  
25 had a friendship with somebody who was a known sex offender.



1 MS. PRICE: Sure. So I think that this goes,  
2 again, to the "truth on the market" standard that needs to be  
3 applied at the pleading stage. It's really a materiality  
4 question, and materiality at this stage of the proceedings is  
5 -- well, materiality, in general, is a fact-intensive inquiry  
6 and so that -- at this stage of the proceedings, it's really  
7 not proper to make a ruling based on it. So the -- again,  
8 the standard for "truth on the market" is that the  
9 information be released with the same intensity and  
10 credibility. So whether or not Mr. Staley was -- had  
11 professional relationships with Mr. Epstein, had personal  
12 relationships with him, knew about the sex offender -- these  
13 are all materiality questions that should be determined at a  
14 later date.

15 But the fact that he was close friends with a  
16 sex offender is material to investors because investors want  
17 to know whether or not their CEO has sound judgment. He  
18 continued to be friends with Mr. Staley well after  
19 Mr. Staley's initial conviction. He continued to be friends  
20 with Staley after several civil litigation cases came out.  
21 He continued to communicate with him. He continued to  
22 communicate with him regarding confidential information and  
23 expressing extreme closeness with somebody that investors  
24 would question whether or not it was good judgment to  
25 continue such a relationship, particularly in the context of



1 running a bank, where there's regulations about anti-money  
2 laundering and regulations about anti-racketeering -- and  
3 that sort of thing -- that Staley as -- excuse me -- that  
4 Staley needed to abide by and Barclays needed to abide by.

5 THE COURT: And then, finally, Counsel, can you  
6 address the argument made by the defense that Barclays's  
7 statements to the FCA which were not public cannot be -- give  
8 rise to liability under the securities laws.

9 MS. PRICE: Sure. The -- Barclays's statements to  
10 the FCA that are not public were -- what was revealed at the  
11 end of the class period is the fact that Barclays and Staley  
12 misrepresented to the FCA that -- the closeness of the  
13 relationship. So what is revealed is confirmed, as  
14 Your Honor said in the tentative, that the -- that the  
15 relationship was closer than was originally stated to be by  
16 Barclays.

17 THE COURT: But you would agree that their actual  
18 statements to the FCA cannot be actionable; the issue is  
19 whether or not what was publicly represented about their  
20 statements was accurate?

21 MS. PRICE: I agree that their private statements  
22 to the FCA are not actionable, but what is actionable is that  
23 -- is statements, for instance, where Barclays says that they  
24 are cooperating with regulators. If you are lying to the  
25 regulators, you are not cooperating with them. So that's --



1 that is the truth that's revealed at the end of the class  
2 period.

3 THE COURT: Understood. Anything further?

4 MS. PRICE: No, Your Honor. Thank you.

5 THE COURT: Okay. As mentioned, I have a number of  
6 other matters. So we'll have to take this on a second call,  
7 and hopefully there will be time for the defense to provide  
8 some rebuttal. Thank you.

9 (Recess from 10:02 a.m. to 11:33 a.m.)

10

11 AFTER RECESS

12 THE COURT: Okay.

13 MS. FLATH: Good morning, again, Your Honor. Thank  
14 you for allowing me what I promise will still be as efficient  
15 and crisp of a rebuttal as I can as though we were still in  
16 our original time.

17 THE COURT: Okay.

18 MS. FLATH: So thank you. Once again, Lara Flath  
19 for the Barclays PLC and Mr. Higgins defendants.

20 THE COURT: Thank you. And I will give you a limit  
21 of ten minutes. I'll put my chess timer on because, yeah, as  
22 I mentioned, we have a busy calendar today.

23 MS. FLATH: Understood, Your Honor, and I will  
24 absolutely do my best to beat that clock.

25 THE COURT: Okay. Great. Thank you.



1 MS. FLATH: Fundamentally, the question that  
2 remains on loss causation is What was new in 2023?  
3 Plaintiffs have pointed to two things, one, the finality, so  
4 to speak, of the FCA's decision and; two, these additional  
5 emails that come out are additional details.

6 First, on the FCA decision point, it was not final  
7 until October 12, 2023, when it was then immediately  
8 disclosed by the press release. And second, on this point of  
9 the availability of information and whether, as counsel  
10 articulated, it needs to come from a more credible source,  
11 that is fundamentally at odds with the efficient market  
12 theory by which plaintiffs allege this entire case. If there  
13 is information that is out there, it is being incorporated  
14 into the price.

15 But most, perhaps, broadly, I think the colloquy  
16 between plaintiff's counsel and the Court really showed that,  
17 as pleaded, plaintiffs cannot point to a coherent theory of  
18 precisely what was new, and we submit that the Court should  
19 dismiss the Complaint such that, when they amend for the  
20 Section 90(a) claim, they articulate whatever theory it is  
21 they believe they can do with respect to loss causation with  
22 the particularity required by the PSLRA. And then, when we  
23 are inevitably back in front of Your Honor on an amended  
24 complaint, we can respond to precisely those allegations, but  
25 as pleaded, plaintiffs have not met their burden.



1           One factual point I would like to clarify relates  
2 to -- and the discussions about Barclays, quote, "continued  
3 support for Mr. Staley" following his departure in 2021,  
4 again, two years before, ultimately, the alleged corrective  
5 disclosure. In 2021, the press release notes Barclays also  
6 agreed that Mr. Staley would be stepping down. This was not  
7 simply Mr. Staley resigning. The press release says that.  
8 The statement that Mr. Staley had done good work colloquially  
9 is a past statement: While he had been at Barclays, he had  
10 done good work as a CEO. That's not alleged to be false.  
11 That does not show continued support for him.

12           But the piece that I would especially point  
13 Your Honor to is in the Complaint itself. It's  
14 Amended Complaint Paragraph 98. In March of 2023, in which  
15 the board notes allegations in a litigation between  
16 Mr. Staley and his former employee -- employer -- excuse me  
17 -- JPMorgan, where he had been from 2008 to 2012, when the  
18 majority of those emails were sent, and it states the  
19 allegations against Mr. Staley are serious, and goes on to  
20 say that the committee -- Barclays's committee continued to  
21 suspend the vesting of Mr. Staley's outstanding deferred  
22 bonus and long-term incentive plan awards.

23           That is not continued support. As of 2021, we had  
24 agreed he was going to part ways. He was moving on. He was  
25 contesting those findings. We had said, "We will not" -- "We



1 suspend the vesting of his compensation." And this is seven  
2 months before then, ultimately, the final decision comes out.  
3 That is not continued support.

4 Your Honor, plaintiffs simply cannot plead and do  
5 not plead loss causation in this Amended Complaint with the  
6 standards, and we'd ask that the Court dismiss for those  
7 reasons, as well as those stated in our papers on the host of  
8 other arguments.

9 THE COURT: Thank you.

10 Anything further from Mr. Staley's counsel?

11 MR. MCNICHOLS: No, Your Honor.

12 THE COURT: Okay. Thank you.

13 Let me just make sure I don't have any final  
14 questions.

15 MS. PRICE: Your Honor?

16 THE COURT: Yes?

17 MS. PRICE: May I please make another point in  
18 regards --

19 THE COURT: Sure. Go ahead.

20 MS. PRICE: Thank you, Your Honor.

21 THE COURT: Go ahead.

22 MS. PRICE: I just wanted to return to this  
23 question of loss causation.

24 THE COURT: Okay.

25 MS. PRICE: Your Honor got the standard exactly



1 right in the tentative ruling on page 16. All we have to  
2 plead is the causal connection between the misrepresentation  
3 and the loss. The FCA decision confirmed the close personal  
4 nature of the relationship and that defendants had falsely  
5 told the FCA that the gentlemen were not close. The  
6 information was new to the market previously with the  
7 disclosure of the preliminary findings of the investigation.  
8 There was no disclosure that defendants had misrepresented to  
9 the FCA the true, close nature of the relationship.

10 What's more, by the fact that this was a disclosure  
11 only about the preliminary investigation, Ninth Circuit  
12 precedent *Loos v. Immersion Corp.* and *Lloyd v. CVB* find an  
13 announcement of a preliminary investigation cannot support  
14 loss causation because the public can't know what the  
15 investigation will ultimately reveal, and here what was  
16 ultimately revealed was that Barclays had misled the FCA  
17 about the closeness of the relationship.

18 THE COURT: Okay. Thank you.

19 Anything further from defense counsel?

20 MS. FLATH: Your Honor, there is no allegation in  
21 the Complaint or otherwise that Barclays misled the FCA.  
22 That's Paragraph 104 of the Amended Complaint, in which the  
23 final decision states Mr. Staley misled both the FCA and  
24 Barclays. So to suggest otherwise is simply factually  
25 unsupported.



1           Finally, the *Loos* case we -- is very  
2 distinguishable -- that was just cited -- L-o-o-s -- in that  
3 a preliminary investigation -- ultimately there is an  
4 investigation found where the defendant had -- the company  
5 had engaged in fraud according to the regulator. Again,  
6 there's no such finding here whatsoever.

7           Thank you.

8           THE COURT: Thank you.

9           I don't want to continue to go back and forth, but  
10 was there a particular paragraph of the Complaint that you  
11 wanted to point to -- this is a question for plaintiff's  
12 counsel -- that one of the concerns was the idea that Barclay  
13 [sic] misled the FCA? Defense counsel says there's no  
14 allegation of that.

15           MS. PRICE: Sure, Your Honor.

16           THE COURT: Okay.

17           MS. PRICE: So if you look at paragraph -- I  
18 believe it's 21. In Paragraph 21 we allege that the FCA  
19 turned over to Barclays the email cache and then Barclays  
20 conducted an internal investigation. At no point after that  
21 investigation did Barclays come back and say to the public or  
22 otherwise, "Yes, the letter" -- October -- "in October 2019,  
23 where we represented that Staley did not have a close  
24 relationship" -- and now I'm looking at Paragraph 20 -- "was  
25 false and misleading to the FCA." So --



1 THE COURT: But where -- I guess, maybe, I  
2 understood her to be saying -- and perhaps I'm mistaken as to  
3 this. Where do you allege that Barclays's misleading of the  
4 FCA supports liability by Barclays and their -- I think that  
5 was the point that defense counsel is making is that there's  
6 not currently an allegation in the Complaint that one of the  
7 bases for liability is that Barclays misled the FCA and then  
8 misled the public that it had misled the FCA.

9 Is that correct?

10 MS. FLATH: Yes, Your Honor.

11 THE COURT: Okay.

12 So the question for you, Counsel, is where is it --  
13 do you allege that Barclays's misrepresentations to the  
14 market about the truthfulness of its communications with the  
15 FCA is a basis for liability?

16 MS. PRICE: So I will try to respond to all of  
17 that.

18 THE COURT: Okay.

19 MS. PRICE: So Paragraph 61 -- we again have a  
20 continuation of the story that I pointed out before in  
21 Paragraph 21, where Higgins is involved in the drafting of  
22 the letter to the FCA. That was misleading and false about  
23 the close relationship between Staley and Barclays.

24 And then in paragraphs -- starting around --

25 THE COURT: The response was misleading?



1 MS. PRICE: That --

2 THE COURT: What was misleading?

3 MS. PRICE: Correct. The letter to the FCA --

4 THE COURT: Okay.

5 MS. PRICE: -- asking about -- when the FCA asked  
6 about the relationship between Staley and Epstein, wanted  
7 assurances that there was no impropriety, that Barclays took  
8 it upon itself, drafted the letter with Mr. Hoyt's initial  
9 drafting, Staley reviewed, Higgins reviewed -- these are all  
10 senior executives at Barclays reviewing, working on this  
11 letter that is sent to the FCA and was misleading.

12 THE COURT: Okay.

13 MS. PRICE: Then, after that occurs, the FCA  
14 receives the email cache. The email cache raises a lot of  
15 questions for the FCA, and the FCA informs Barclays of the  
16 issues -- this is now Paragraph 65 -- asking them to account  
17 for it.

18 And Barclays conducts its own internal  
19 investigation. And then Paragraph 69, it comes out in  
20 support of Mr. Staley after having reviewed the email cache.  
21 It also says that it -- and it also says that the --

22 THE COURT: Do you need a moment?

23 MS. PRICE: I'm sorry.

24 So -- and it also says that the letter -- I  
25 apologize. So the false and misleading statements in 69, for



1 instance, are a follow-on to the FCA asking about the close  
2 relationship, and the FCA began an investigation, and Staley  
3 and the company then comes out and says that they were  
4 cooperating with regulators in the investigation --

5 THE COURT: And which paragraph --

6 MS. PRICE: -- and that's Paragraph 70.

7 THE COURT: Okay. Thank you.

8 MS. PRICE: "The Group is cooperating with the  
9 relevant authorities" -- you can't cooperate with relevant  
10 authorities -- and that's how I ended earlier -- when you've  
11 misled them.

12 THE COURT: Understood. Okay.

13 I did want to give defense the last word, since  
14 it's your motion, and then we'll end. Thank you.

15 MS. FLATH: Thank you, Your Honor. It will be very  
16 brief.

17 First, it was established earlier in our  
18 discussions today, both with Your Honor and then between  
19 Your Honor and plaintiff's counsel, that the October 2019  
20 letter to the FCA is not the basis of liability here.

21 Second, the FCA did not, in 2023 or ever, conclude  
22 that Barclays misled it. We direct the Court to the 2023  
23 FCA decision notice, which speaks for itself. Because the  
24 FCA never reached that conclusion, the public could not have  
25 learned that in 2023. That information is not out there.



1 That is not the basis for an alleged corrective disclosure.

2 Thank you.

3 THE COURT: Thank you.

4 Okay. Well, thank you to the parties. I  
5 appreciate the briefing and the lengthy argument. The Court  
6 will take the matter under submission and issue its order.

7 Thank you. Take good care, counsel.

8 MULTIPLE SPEAKERS: Thank you, Your Honor.

9 (Proceedings adjourned at 11:46 a.m.)

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CERTIFICATE

I certify that the foregoing is a correct transcript  
from the electronic sound recording of the proceedings in the  
above-entitled matter.

/s/ Julie Messa  
Julie Messa, CET\*\*D-403  
Transcriber

May 18, 2025  
Date